

Bankruptcy laws

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Bankruptcy law was established to assist individuals and companies that are struggling to pay off loans and other debts that they have accrued. Their debts are due to uncontrollable circumstances which are not entirely their own fault. Chapter 7 of the bankruptcy law automatically covers any businesses and disabled veterans as well as individuals who do not meet the mean income average of families within a particular state. The fairly new bankruptcy law mandates a person to be assessed in order to be deemed eligible.

Chapter 11, on the other hand, is for people who have accumulated large amounts of debts. There is no limit to the debts that have been amassed unlike Chapter 13, wherein debts have to fall between the range of \$922, 975 in secured debt and \$307, 675 in unsecured debt (“ General Concepts”). Finally, Chapter 12 of the bankruptcy law covers indebted fishermen and farmers.

Changes in bankruptcy law especially in regards to Chapter 7 have transpired due to the fact that some people have abused this established law. This is because Chapter 7 eliminates someone's unsecured debt, which means any “ tangible property or any other kind of product... attached to [the] debt”, which ends up hurting credit card companies (“ What is the Difference”). For someone's debt to be discharged, a person has to go through several processes and there are certain restrictions that go along with it. However, the new bankruptcy law requires people to submit deadlines in a timely manner. It also provides more paperwork for lawyers to do, resulting in increased cost for legal fees. This has raised the relevance of counseling agencies.

People file for bankruptcy for various reasons. Some of these reasons include: being fired or laid off from a job which hinders an individual from paying their monthly bills, businesses who experience more outflow than inflow of money; just to name a few. Chapter 7 specifically aids “[c]ompanies, married couples and individuals (“ Types of Bankruptcy”). In addition, Chapter 7 is granted to “[d]isabled veterans whose debts were incurred during active duty and people whose debts come primarily from the operation of a business (“ Who Can File”).

Also, if “ the debtor’s current monthly income after subtracting allowed deductions is less than \$100, the debtor is eligible for Chapter 7” (Pankow and Gorham). But if the “ current monthly income after subtracting allowed deductions is enough to repay 25% of the debtor’s unsecured debt over the next 5 years, the debtor is not eligible for Chapter 7” (Pankow and Gorham).

However, a person has to go through a long and grueling process to be even considered for Chapter 7. First of all, people who want to file for Chapter 7 bankruptcy have to attend a briefing (“ Filing Bankruptcy”). This briefing cannot be done by their attorney (“ Filing Bankruptcy”). Then, these people “ will be required to attend financial management classes. Initially, these will be provided by some type of a credit counseling service agency. The debtor must complete the course - and pay for it...” (“ Filing Bankruptcy”).

Once a person has qualified for Chapter 7, a trustee is “ appointed to maneuver the sale of the debtor's assets” (“ What are the differences”). However, it does not necessarily require selling all the debtor’s assets. According to federal and state laws, specific exemptions can be made. For instance, the debtor is allowed to keep his “ primary residence and personal

items like clothing" (" What are the differences"). When all assets of the debtor are sold, the trustee gives a portion of the proceeds to certain creditors.

As there will be creditors who will not receive money from the income gained, the financial obligation of the debtor to these creditors are "'forgiven' or discharged" (" What are the differences"). In a p of four months, discharge can take place (" Filing Bankruptcy"). Nonetheless, discharge within Chapter 7 is effective for eight years (" Who Can File"). Thus, if an individual files for another Chapter 7 before the eight years is up, the discharge may not take place the second time around (" Who Can File").

Nevertheless, if a person has filed for bankruptcy in the last two years, filing another one will not protect their property from foreclosure or from them being evicted (Pankow and Gorham). Also, debts that were not discharged during a prior Chapter 7 bankruptcy filing will still remain to be the case for the second Chapter 7 that will be filed (" What are the differences").

However, not all debts will be discharged. Payments such as " child support... taxes and student loans. Debts for which the debtor has pledged collateral for the loan (such as cars, homes and household goods, certain condo or co-op fees.) also do not go away in a bankruptcy" (" What are the differences"). And this will be included in a person's credit history for the next ten years (" Chapter 7 Bankruptcy").

All of these precautionary measures ensure that debtors will not abuse the provision of Chapter 7 on debt discharge (Pankow and Gorham). Specific requirements were set in place so people can " demonstrate that they have

very limited or no capacity to pay any of those obligations in the future” (Pankow and Gorham). Therefore, Chapter 7 bankruptcy will not be a free pass to anyone who has accumulated debt. Restrictions on Chapter 7 ensued because credit card companies lobbied in Congress. The reason is most people who file for Chapter 7 “ don't have assets that qualify for liquidation, credit card companies and other creditors sometimes get nothing” (Sahadi).

Another bankruptcy option is Chapter 11. This is limited to people who have acquired huge sums of debt. Thus, it was “[o]riginally only intended for large corporations, [but] individuals can now file Chapter 11 as well” (“ What are the differences “). Chapter 11 involves an “ adjustment of debts, either by reducing the debt or by extending the time for repayment, or may seek a more comprehensive reorganization” (“ Chapter 7 Liquidation”).

Also, the proposed reorganization plan has to be “ accept[ed] by a majority of the creditors, is confirmed by the court and binds both the debtor and the creditors to its terms of repayment. Plans can call for repayment out of future profits, sales of some or all of the assets, or a merger or recapitalization” (“ Bankruptcy Basics”). However, people filing for Chapter 11 can operate their business as usual, although the court and creditors committee will closely monitor the business (“ Bankruptcy Basics”).

Chapter 12 is another solution being offered to indebted fishermen and farmers.

People filing for Chapter 12 are “ allowed to pay the creditors in some duration of time from future earnings. But the income of the debtor should be only from a farm owned by hisfamilyor a commercial fishing operation” (“

Types of Bankruptcy"). The indebted person is appointed a trustee who prepares a repayment plan proposal which would be assessed by the court. The court would either accept it or develop another repayment plan ("Types of Bankruptcy"). Also, this option allows people to keep what they own and they can repay "only a percentage of what [they] actually owe-sometimes as little as 30 cents to 50 cents on the dollar!" ("Types of Bankruptcy").

However, Chapter 13 is considered to be the one that most people file for after Chapter 7. This is because people who do not meet the qualifications of Chapter 7 will instead file for Chapter 13. Thus, "[i]f the debtor's current monthly income after subtracting allowed deductions exceeds \$166.67, the debtor is not eligible for Chapter 7, but must file Chapter 13 (Pankow and Gorham).

The main reason people will opt to file for Chapter 13 instead is if "the individual has an expensive piece of property or asset that is not covered by [the] exemption [in Chapter 7]" ("Chapter 13 Bankruptcy"). Chapter 13 bankruptcy is also intended for those who wish to pay off a portion of their debts in three to five years because they have something major to lose ("Filing Bankruptcy"). Thus, people will consider it if they have a home to save from foreclosure or cars from repossession, which is made possible by the payment plan ("Chapter 7 Liquidation").

People filing for Chapter 13, which undergoes the same process as Chapter 12, need to have a regular income and have amassed "debt limits [of] \$922,975 in secured debt (like home mortgages and auto loans), and \$307,675 in unsecured debt (like most credit card debt)" ("General Concepts"). Unfortunately, a debtor "cannot file for a Chapter 13 bankruptcy if he has <https://assignbuster.com/bankruptcy-laws/>

received a discharge under Chapters 7, 11 or 12 less than 4 years ago” or “[i]f he has received a discharge under Chapter 13 less than 2 years ago” (“Are You Eligible for”). Also, Chapter 13 remains in one's credit history for 7 years (“Different types of bankruptcy”).

The new bankruptcy law, established on the 17th of October 2005, altered as well as added requirements that people and lawyers have to be aware of (“New Bankruptcy Law”). The first requirement is for people to meet with “an approved credit counselor [in their] judicial district for a 90-minute session [for] six months prior to applying for bankruptcy” (Sahadi). And for debts to be discharged, it is necessary to “attend money management classes at your expense” (Sahadi). In addition, it is not up to the judge anymore to decide if a person does or does not have enough money to qualify for Chapter 7 (“Who Can File for”).

Under the new law, Chapter 7 eligibility has to be determined by measuring one's “‘current monthly income’ against the median income for a family of your size in your state. Your ‘current monthly income’ is your average income over the last six months before you file. If your income is less than or equal to the median, you can file for Chapter 7” (“Who Can File for”).

Equally important is the new law which requires a lawyer to provide accurate information to his client at all times (“New Bankruptcy Law”). If not, the lawyer will have to pay several fees and fines (“New Bankruptcy Law”). Also, “the introduction of IRS schedules for ‘allowable’ living expenses in Chapter 13 cases” has been included in the revised code (“The New Bankruptcy Law”).

However, the new bankruptcy law may actually be tough for people. If the debtor misses filing a deadline, this may cause his or her file to be dismissed. To re-file for bankruptcy, the debtor has to pay several costly penalties which make it more difficult for him or her to be financially stable (Crane). Also, the cost of legal paperwork has doubled because as John Penn, “[P]resident of the American Bankruptcy Institute and a partner with the law firm Haynes and Boone in Fort Worth, says '[t]he main reason it will be more expensive is there is so much more work required of lawyers and debtors'” (qtd in Crane).

Plus, the relevance of credit counseling agencies is now magnified. This is because they are the ones that people meet to discuss options and strategies they can do to get rid of their debt. However, according to Deanne Loonin of the National Consumer Law Center, these agencies are not certified lawyers with formal training in bankruptcy law (qtd in Dash and Bayot).

Moreover, the new law seems to favor the rich because of the asset protection trust. This particular trust allows debtors to have their significant assets protected from creditors even after bankruptcy was filed. Thousands of dollars need to be spent to set up a trust, maintain it and pay an in-state trustee (“ New Bankruptcy Law”). Even though only eight states have passed this law namely: Alaska, Delaware, Utah, Nevada, Rhode Island, Oklahoma, South Dakota, and Missouri; people from any state can now avail of it (“ New Bankruptcy Law”). However, due to its cost, not everyone can afford it.

Changes regarding Chapter 7 of the new bankruptcy law ensure that people do not abuse it if they can actually pay their debt. However, the new requirements demand more paperwork which can be a disadvantage to people who do not have enough means as it is to pay the increased legal cost. Also, credit counseling agencies, mandated by the new law, are not trained experts in dealing with legal matters associated with bankruptcy. Thus, even though the new law has obvious benefits, -both for the consumers, taxpayers and credit card companies- indebted people may actually face a quick sand system instead of one that actually lends a helping hand.

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